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By:

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Date: July 8, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Stuart Hansen

Group Unit: 2878

Serial No.: 10/617,597

Examiner: John R. Lee

Title: "MULTI DYNODE DEVICE AND HYBRID DETECTOR
APPARATUS FOR MASS SPECTROMETRY"

Filed on: July 11, 2003

Attorney Docket No.: 10992021-2

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR §1.181

Dear Sir:

This is a petition under 37 CFR §1.181, requesting relief from the refusal to enter the Preliminary Amendment filed on July 11, 2003. Any fee due for or as a result of this petition may be charged to Deposit Account 50-1078. Please credit any overpayment to the same account. This petition is being filed within the two-month period provided for under 37 CFR §1.181(f).

A brief statement of facts is given:

Applicants filed a divisional application on July 11, 2003, including a Request for a Continuing Application which included the priority information citing the parent case, and a Preliminary Amendment which included the request for entry of the priority information into the specification. The Patent Office responded on Oct. 8, 2003 by mailing a filing receipt acknowledging the priority claim. In a paper mailed on May 11, 2004, the Patent Office refused to enter the Preliminary Amendment.

Applicants request relief as follows:

First Request: Applicants request that the refusal to enter the Preliminary Amendment be rescinded.

The reason cited for the non-entry of the Preliminary Amendment was that the Preliminary Amendment was “non-compliant because it has failed to meet the requirements of 37 CFR §1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, June 30, 2003)” (emphasis added).

Referring to the cited Federal Register, publishing the final rule changes:

“DATES: Effective Date: July 30, 2003.”

“Applicability date: The changes apply to any paper filed in the Office on or after July 30, 2003.”

(68 Fed. Reg. 38611, 38611, June 30, 2003). However, the new amendment format required by 37 CFR §1.121, as amended on June 30, 2003, did NOT become effective until July 30, 2003. The Preliminary Amendment filed by Applicants on July 11, 2003 was therefore NOT required to be in compliance with the format set forth in 37 CFR §1.121, as amended on June 30, 2003. Applicants therefore assert that no sufficient reason for refusing to enter the Preliminary Amendment has been provided to the Applicants, and Applicants therefore request entry of the Preliminary Amendment.

Applicants note that the Examiner may wish to object to or reject to the amendments, once entered, but the reasons for such further objections/ rejections should be clearly set forth on the record, with opportunity for Applicants to reply. Applicants are requesting, in this First Request for Relief, that the Preliminary Amendment be entered (as of the date originally submitted) and Applicants be given opportunity to respond to any further objections/ rejections.

Second Request: In the event that the First Request is not favorably heard and granted by the Petitions Officer, Applicants request in the alternative that the Patent Office accept the priority information which was included in the Request for a Continuing Application and either (1) treat this priority information as a request to enter the priority information into the specification as of the date it was originally submitted, or (2) treat this priority information as a “constructive” data sheet under 37 CFR §1.76, thereby incorporating the priority information under 37 CFR §1.78(a)(2)(iii) as of the date it was originally

submitted. It is asserted that the priority information originally submitted was sufficient to protect the public and governmental interest in seeing that such priority information is timely submitted, and thus the policy behind 37 CFR §1.78 is fulfilled. Therefore, Applicants' Request for Relief should be granted as providing an essentially fair resolution to this matter without undue burden on either the Applicants or the Patent Office.

Third Request: In the event that neither the First Request nor the Second Request are favorably heard and granted by the Petitions Officer, Applicants request in the alternative that the Examiner in charge of this case enter the priority information as an Examiner's Amendment under 37 CFR §1.121(g) and that entry of the priority information be accepted as submitted "during the pendency of the application as required by the Director" (under 35 USC §120). As above, the priority information originally submitted was sufficient to protect the public and governmental interest in seeing that such priority information is timely submitted, and Applicants' Request for Relief should be granted as providing an essentially fair resolution to this matter without undue burden on either the Applicants or the Patent Office.

Fourth Request: In the event that none of the First, Second, or Third Requests are favorably heard and granted by the Petitions Officer, Applicants request in the alternative that a one-month extension of time be granted for submitting the enclosed Amendment, and that the enclosed Amendment be entered. Authority to charge any fee required (e.g. the fee for a one month extension) is provided in enclosed Amendment. (Grant of the extension of time and entry of the enclosed amendment may be treated by the Petitions Officer as a suspension of the Rules under 37 CFR §1.183.) The enclosed Amendment includes the same information as included in the originally filed Preliminary Amendment, but has been altered to conform to the requirements of 37 CFR §1.121, as amended on June 30, 2003 and rendered effective July 30, 2003. Applicants further request that entry of the priority information be accepted as submitted "during the pendency of the application as required by the Director" (under 35 USC §120). Again, Applicants believe their Request for Relief should be granted because the initial priority information submitted in this case (which was acknowledged by the Patent Office) provided for

sufficient actual notice to the Patent Office and to the Public (e.g. eventual access to the file wrapper) of the priority claim. Applicants' Request for Relief should be granted as providing an essentially fair resolution to this matter without undue burden on either the Applicants or the Patent Office.

Fifth Request: In the event that each of the above Requests is heard by the Petitions Officer in charge of this petition and is refused by the Petitions Officer, Applicants request that the enclosed Amendment be entered under 37 CFR §1.121(a)(3). As required under 37 CFR §1.121(a)(3), Applicants hereby state that the entire delay between the date the claim for priority was due and the date the priority claim was filed was unintentional. The priority claim is included in the enclosed Amendment, and any fee due (e.g. surcharge required under 37 CFR §1.121(a)(3)) is authorized to be paid in the enclosed Amendment.

For the reasons described above, Applicants hereby petition for relief as described in one of the above Requests. Applicants earnestly seek the relief described in the First through Fourth Requests, above, and assert that such relief, if granted, will be fair and efficient and will provide for expeditious prosecution of the patent application on the merits. In the event that relief described in the First through Fourth Requests is not granted, Applicants request relief as described in the Fifth Request, above.

If the Petitions Officer in charge of hearing this petition has any questions that may be resolved via a telephone call, the Petitions Officer is invited to call Applicants' attorney at the phone number given below.

Respectfully submitted,

STUART HANSEN

By:



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Date: July 8, 2004

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